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DECISION



File
Line 1...

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189622

DATE: March 24, 1978

MATTER OF: Roscoe L. Simmons - Actual Subsistence Expenses -
Meal at Airport at Permanent Duty Station

DIGEST: NSA employee on TDY from Fort Meade authorized actual expenses claims cost of dinner obtained at Baltimore-Washington International Airport upon return before proceeding to residence at Columbia. Claim disallowed. Subsistence expenses at permanent duty station airport are not generally allowable. Election to eat dinner at airport rather than home was personal and cost was not necessary expense of official travel within purview of 5 U.S.C. 5702(c).

By memorandum dated June 29, 1977, reference N41/0411, PDTATAC Control No. 77-24, Mr. W. Smallets, Chief, Finance and Accounting, Central Security Service, National Security Agency, Department of Defense, requests a decision on a claim of Mr. Roscoe L. Simmons, an employee stationed at Fort George G. Meade, Maryland, for \$11.30. This was the cost of a dinner meal he obtained at the Baltimore-Washington International Airport upon his return from temporary duty before proceeding to his residence at Columbia, Maryland.

Mr. Simmons traveled to Los Angeles, California, a high cost area, on Monday, May 9, 1977. Actual subsistence expenses were authorized for this trip pursuant to paragraph C4601, volume 2, Department of Defense Joint Travel Regulations. He returned on Friday, May 13, 1977, departing Los Angeles at 11:45 a.m. Pacific time (2:45 p.m. Eastern time) on a lunch flight, and arriving at the Baltimore-Washington International Airport at 7:00 p.m. Eastern time. He then obtained the dinner meal in question at the airport after which he departed at 7:45 p.m. and arrived at his residence at Columbia at 9:00 p.m.

It appears to be Mr. Simmons contention that his claim should be allowed because dinner was not served on his flight, because the time of arrival at his residence was beyond the normal dinner time, and because, had he been authorized per diem in lieu of actual subsistence, his entitlement would have continued through the last quarter of day of his return, the period in which the dinner was obtained. The Chief, Finance and Accounting, however, believes the claim to be doubtful in view of our decision in Matter of Bennie L. Pierce, B-185926, May 28, 1976, and raises the following questions:

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"a. If the airline schedule does not reflect that a dinner meal is served on a particular flight, may an employee be reimbursed for a dinner meal consumed at an airport subsequent to arrival or enroute to his residence * * *?"

"b. If the above question is answered in the affirmative, would the time of arrival be a factor for consideration as to whether the meal was necessarily incurred when the travel itinerary reflects arrivals at 1700, 1730, 1800 hours and the travel time between airport terminal and residence takes from 20 minutes to 1 hour?"

We shall not attempt to answer these questions categorically since different and unusual circumstances might justify different results. For example, see 52 Comp. Gen. 135 (1972) where an the employee was allowed per diem because he was prevented from returning from the airport to his home by a blizzard, and B-188985, August 23, 1977, also involving a blizzard, which follows the general rule that subsistence expenses incurred by an employee at his permanent duty station, his residence, or at or enroute to or from a nearby airport where his travel begins or ends are not reimbursable. However, insofar as the instant case is concerned, the answer to the question is no for the following reasons.

Subsection 5702(c) of title 5, United States Code, provides in pertinent part as follows:

"Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for actual and necessary expenses of official travel * * *."

Similarly, item 1-1.3b of the Administrator's implementing regulations, the Federal Travel Regulations, FPMR 101-7, May 1973, provides as follows:

"Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of the official business."

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In Pierce, supra, the employee claimed reimbursement for a second lunch, one in addition to the one served him in flight, on the grounds that his early time of departure from his residence, 6:45 a.m., prevented him from having breakfast at home. The claim was disallowed because there did not appear to be any reasonable explanation as to why the employee was unable to eat breakfast prior to leaving home, however early his departure may have been. Therefore the cost of the second lunch was not a necessary expense of official travel or essential to the transacting of official business.

Similarly in the instant case, Mr. Simmons' election to have his dinner at the airport rather than at home was a purely personal choice, dictated at least in part by his preference as to time of eating. Therefore, in our opinion, the cost of this dinner was a personal expense, rather than a necessary expense of official travel or essential to transacting official business within the purview of the statute and the regulation. As such it is not reimbursable. The fact that, had Mr. Simmons been authorized per diem, his entitlement would have continued through the last quarter of his day of return is immaterial. Per diem is an allowance in lieu of actual expenses and the rules governing its payment have no application here.

Accordingly, Mr. Simmons' claim is disallowed and the voucher may not be certified for payment.

R. F. [Signature]
Deputy Comptroller General
of the United States